

Pamela M. Egan, WSBA No. 54736
POTOMAC LAW GROUP PLLC
1905 7th Ave. W
Seattle, WA 98119
Telephone: (415) 297-0132
Email: pegan@potomaclaw.com
Attorneys for Mark D. Waldron, Chapter 7 Trustee

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON**

In re: GIGA WATT, Inc., a Washington corporation, Debtor.	Case No. 2:18-bk-3197 The Honorable Frederick P. Corbit Chapter 7
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MARK D. WALDRON, as Chapter 7 Trustee, Plaintiff, vs. PERKINS COIE LLP, a Washington limited liability partnership, <i>et al.</i> , Defendants, - and - THE GIGA WATT PROJECT, a partnership, Nominal Defendant.	Case No. 2:20-ap-80031 PLAINTIFF'S STATUS REPORT AND PROPOSED DISCOVERY PLAN <u>Status Conference</u> Date: June 23, 2021 Time: 11:00 a.m. Location: Zoom Invitation
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Pursuant to the Court's Minute Entry [AP ECF 60], dated May 4, 2021, the parties in the above-captioned adversary proceeding met and conferred through

1 counsel on May 27, 2021, at 3:00 p.m., by telephone regarding the topics outlined
2 in this report. The parties who met and conferred on May 4, 2021 were:

3 Pamela M. Egan of Potomac Law Group, PLLC, counsel for Plaintiff, Mark
4 D. Waldron, as Chapter 7 Trustee in the above-captioned bankruptcy case of Giga
5 Watt, Inc. (“Giga Watt”);

6 Joffrey McWilliam of Byrnes Keller Cromwell LLP, counsel for
7 Defendants Perkins Coie LLP and Lowell Ness (collectively, “Perkins”); and

8 Elon Berk of Gurovich, Berk & Associates, counsel for Defendant Andrey
9 Kuzenny.

10 Defendant Giga Watt Pte. Ltd. (“GW Sg.”) has not made an appearance in
11 this adversary proceeding.

12 Nature of Claims and Defenses. Plaintiff Waldron claims that Defendants
13 Perkins and GW Sg. breached their fiduciary duties to Giga Watt by prematurely
14 releasing funds from Perkins’ IOLTA trust account, which Lowell Ness had made
15 available to GW Sg. for use in the Giga Watt Initial Coin Offering (the “GW
16 ICO”). The account held a portion of the proceeds from the GW ICO, specifically,
17 the proceeds from token sales.¹ Plaintiff Waldron further claims that Perkins and
18 Kuzenny aided and abetted GW Sg.’s breach of fiduciary duty to Giga Watt.

19 Defendant Perkins denies the allegations and raises a variety of affirmative
20 defenses.

21
22 ¹ The proceeds for miner sales, also part of the GW ICO, went directly to GW Sg.,
23 Cryptonomos Pte. Ltd., or another person, and did not go through Perkins’ IOLTA
trust account.

1 Defendant Kuzenny denies the allegations, has invoked the U.S.
2 Constitutional privilege against self-incrimination, and raises a variety of
3 affirmative defenses.

4 Initial/Pre-Discovery] Disclosures. The parties have exchanged the initial
5 disclosures required under FRCP 26(a)(1).

6 Anticipated Discovery. Plaintiff Waldron anticipates conducting discovery
7 on the following topics:

- 8 1. Perkins' knowledge and familiarity with the terms of the GW ICO,
9 including the terms of the Escrow, and, more generally, the role it played in the
10 GW ICO;
- 11 2. Perkins' handling of the Escrow and internal communications
12 regarding the Escrow;
- 13 3. The transfer of control of Giga Watt from David Carlson to Kuzenny;
- 14 4. Kuzenny's embezzlement of customers' funds from wallets;
- 15 5. The SEC Investigation of Giga Watt;
- 16 6. The role of Katrina Arden regarding the GW ICO, the related escrow,
17 and Perkins' relationship with Arden;
- 18 7. Tracing the ICO escrow funds to the extent reasonably possible;
- 19 8. The value of the 30MW [power contract](#) between Giga Watt and the
20 Douglas County Public Utility District No. 1, dated March 7, 2017.

21 Plaintiff Waldron intends to assert that the crime/fraud exception applies to
22 the communications of Perkins, GW Sg., and Kuzenny with respect to the ICO
23 escrow.

1 Two-Phase Discovery. The parties plan to conduct discovery in two phases.
2 The first phase of discovery will include fact discovery. The second phase of
3 discovery will include expert discovery, which the plaintiff anticipates on the
4 issue of damages, particularly Giga Watt's value.

5 Discovery Schedule. The parties are working toward a joint proposal on
6 discovery deadlines. The plaintiff proposes the following:

- 7 1. Fact discovery to be completed by December 31, 2021;
- 8 2. The parties shall serve their opening experts' reports under FRCP
9 26(a)(2) by January 31, 2022. The parties shall serve their rebuttal experts' reports
10 by March 2, 2022. The parties shall complete expert depositions for rebuttal
11 experts by April 15, 2022.
- 12 3. The parties shall complete all fact and expert discovery by April 15,
13 2022.

14 Defendants Perkins and Kuzenny have until Monday, June 21, 2021 to
15 submit their comments.

16 Partially Dispositive Motions. The Plaintiff proposes that motions for
17 summary judgment be filed by May 15, 2022. Plaintiff expects to file partial
18 motions for summary judgment before trial on various issues, including the issues
19 of duty, breach, causation, and substantial assistance. The Plaintiff expects the
20 issue of damages to go to trial, including on the issue of the value of the Pangborn
21 Power Contract.

22 Trial. Trial will occur in the latter half of July 2022, subject to the Court's
23 schedule.

1 Treatment of Electronically Stored Information. The parties have not
2 discussed a protocol for Electronically Stored Information (ESI) in this matter, but
3 will attempt to reach agreement regarding the following issues:

- 4 1. Preservation of ESI;
- 5 2. ESI Custodians;
- 6 3. Methods for Culling Relevant Documents;
- 7 4. Forms of Production;
- 8 5. Extent of metadata production; and
- 9 6. Order of Production.

10 Withdrawal Motion. On June 15, 2021 at 1:30 p.m., the U.S. District Court
11 for the Eastern District of Washington (the “District Court”) heard oral argument
12 on Defendant Perkins’ motion to withdraw the reference. The District Court took
13 the matter under advisement and will issue a written opinion.

14 The Automatic Stay and Contempt. Less than a month after the Trustee
15 commenced this Adversary Proceeding, Jun Dam commenced in the District
16 Court a copycat lawsuit against Perkins Coie LLP, Lowell Ness and affiliates. *See*
17 *Dam v. Perkins Coie LLP*, [Case No. 2:20-cv-00464](#) (the “District Court Action”).
18 The Trustee and Dam were unable to consensually resolve the violation of the
19 automatic stay. Therefore, on June 18, 2021, the Trustee filed in this bankruptcy
20 case, the Trustee’s Motion for an Order to Show Cause Why Jun Dam Should Not
21 Be Sanctioned for Violating the Automatic Stay, [ECF No. 889](#) and Memorandum
22 in support thereof, [ECF No. 890](#).

1 On June 18, 2021, the Trustee also filed in the District Court Action the
2 Notice of Automatic Stay and Contempt Proceeding, which is attached hereto as
3 Exhibit 1. In the District Court Action, Jun Dam is asserting the same facts and
4 asking for the same remedies as Giga Watt in this Adversary Proceeding. The
5 value of Jun Dam's tokens was wiped out when Giga Watt collapsed, not when
6 the Escrow collapsed. Therefore, his damages are derivative of Giga Watt's
7 damages. Dam's claim is property of the estate and the District Court Action
8 violates section 362(a)(3) of title 11 of the United States Code.

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10 Dated: June 18, 2021

POTOMAC LAW GROUP PLLC

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12 By: /s/ Pamela M. Egan
13 Pamela M. Egan (WSBA No. 54736)
14 *Attorneys for Mark D. Waldron, Chapter 7*
15 *Trustee, Plaintiff*
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